

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE: : CASE NO. 10-93904-BHL-11

EASTERN LIVESTOCK CO., LLC, : (Judge Basil H. Lorch III)

Debtor. :
: **THE FIRST BANK AND TRUST
COMPANY'S DESIGNATION OF
ITEMS TO BE INCLUDED IN THE
RECORD ON APPEAL AND
STATEMENT OF ISSUES TO BE
PRESENTED**
:

The First Bank and Trust Company designates the following items for inclusion in the record, and sets forth the following statement of issues to be presented on appeal, pursuant to Federal Rule of Bankruptcy Procedure 8006:

I. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

- A. The following items filed publically in this case and appearing on the ECF system should be included in the record on appeal:
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<u>Filing Date</u>	<u>Docket No.</u>	<u>Docket Text</u>
December 6, 2010	1	Involuntary Petition
December 7, 2010	27	Emergency Motion Under 11 U.S.C §§ 303(f) AND (g), 105 AND 1104(a) for an Order Appointing Interim Trustee and Authorizing and Directing Interim Trustee to Operate Debtor's Business
December 7, 2010	27-1	Exhibit A to Emergency Motion Under 11 USC §§ 303(f) AND (g), 105 AND 1104(a) for an Order Appointing Interim Trustee and Authorizing and Directing Interim Trustee to Operate Debtor's Business

December 7, 2010	27-2	Exhibit B to Emergency Motion Under 11 USC §§ 303(f) AND (g), 105 AND 1104(a) for an Order Appointing Interim Trustee and Authorizing and Directing Interim Trustee to Operate Debtor's Business
December 7, 2010	27-3	Exhibit C to Emergency Motion Under 11 USC §§ 303(f) AND (g), 105 AND 1104(a) for an Order Appointing Interim Trustee and Authorizing and Directing Interim Trustee to Operate Debtor's Business
December 7, 2010	27-4	Exhibit D to Emergency Motion Under 11 USC §§ 303(f) AND (g), 105 AND 1104(a) for an Order Appointing Interim Trustee and Authorizing and Directing Interim Trustee to Operate Debtor's Business
December 7, 2010	28	Minute Entry / Order
December 13, 2010	68	Minute Entry / Order
December 16, 2010	77	Order Approving Motion for the Appointment of a Trustee Under 11 U.S.C. §§ 105, 303, and 1104
December 23, 2010	98	Notice of Appointment and Application for Order Approving Appointment of Trustee
December 23, 2010	98-1	Trustee's Verified Statement and Notice of Acceptance
December 23, 2010	98-2	Affidavit of Disinterest
December 27, 2010	102	Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee
December 30, 2010	113	Application to Employ Baker & Daniels LLP as Counsel to Chapter 11 Trustee
December 30, 2010	114	Affidavit of Terry E. Hall in Support of Application to Employ Baker & Daniels LLP as Counsel to Chapter 11 Trustee

January 10, 2011	181	Objection of The First Bank and Trust Company to Application to Employ Baker & Daniels LLP as Counsel to Chapter XI Trustee
January 10, 2011	181-1	Exhibit A to Objection of The First Bank and Trust Company to Application to Employ Baker & Daniels LLP as Counsel to Chapter XI Trustee
January 10, 2011	181-2	Exhibit B to Objection of The First Bank and Trust Company to Application to Employ Baker & Daniels LLP as Counsel to Chapter XI Trustee
January 10, 2011	181-3	Exhibit C to Objection of The First Bank and Trust Company to Application to Employ Baker & Daniels LLP as Counsel to Chapter XI Trustee
January 18, 2011	219	Application to Employ Hoover Hull LLP as Special Counsel to Chapter 11 Trustee
January 18, 2011	219-1	Exhibit A to Application to Employ Hoover Hull LLP as Special Counsel to Chapter 11 Trustee
January 24, 2011	235	Amended Affidavit of Terry E. Hall in Support of Application to Employ Baker & Daniels LLP as Counsel to Chapter 11 Trustee
January 27, 2011	241	The First Bank and Trust Company's Withdrawal of Objection to Employment of Baker & Daniels LLP as Counsel to Chapter 11 Trustee
February 4, 2011	POC No. 13	Proof of Claim filed by Fifth Third Bank
February 11, 2011	271	Motion to Approve Trustee's Borrowing and Use of Cash Collateral, Modify the Automatic Stay, Provide Adequate Protection Payments, Protect Confidential Information, and Schedule Final Hearing

February 11, 2011	271-1	Exhibit A to Motion to Approve Trustee's Borrowing and Use of Cash Collateral, Modify the Automatic Stay, Provide Adequate Protection Payments, Protect Confidential Information, and Schedule Final Hearing
March 2, 2011	306	Notice of Submission or Revised Exhibit A to Motion to Approve Trustee's Borrowing and Use of Cash Collateral, Modify the Automatic Stay, Provide Adequate Protection Payments, Protect Confidential Information, and Schedule Final Hearing
March 2, 2011	306-1	"Clean" exhibit to Notice of Submission or Revised Exhibit A to Motion to Approve Trustee's Borrowing and Use of Cash Collateral, Modify the Automatic Stay, Provide Adequate Protection Payments, Protect Confidential Information, and Schedule Final Hearing
March 2, 2011	306-2	"Blacklined" exhibit to Notice of Submission or Revised Exhibit A to Motion to Approve Trustee's Borrowing and Use of Cash Collateral, Modify the Automatic Stay, Provide Adequate Protection Payments, Protect Confidential Information, and Schedule Final Hearing
March 8, 2011	313	Debtor's Bankruptcy Schedules, including Schedule F
March 8, 2011	319	Objection to Trustee's Motion to Approve Trustee's Borrowing and Use of Cash Collateral, Modify the Automatic Stay, Provide Adequate Protection Payments, Protect Confidential Information, and Schedule Final Hearing
March 8, 2011	324	Objection to Motion to Approve Trustee's Borrowing and Use of Cash Collateral, Modify the Automatic Stay, Provide Adequate Protection Payments, Protect Confidential Information, and Schedule Final Hearing

March 8, 2011	326	Limited Objection to Trustee's Financing Motion
March 8, 2011	327	Friona's Industries, LP, Cactus Growers, Inc., and J & F Oklahoma Holdings, Inc.'s Response to Motion to Approve Trustee's Borrowing and Use of Cash Collateral, Modify the Automatic Stay, Provide Adequate Protection Payments, Protect Confidential Information, and Schedule Final Hearing
March 8, 2011	328	Objection to Motion to Approve Trustee's Borrowing and Use of Cash Collateral, Modify the Automatic Stay, Provide Adequate Protection Payments, Protect Confidential Information, and Schedule Final Hearing
March 10, 2011	340	Trustee's Response to Objections to Trustee's Financing Motion
March 10, 2011	349	Response of Fifth Third Bank, N.A. to Objections to Trustee's Financing Motion
March 11, 2011	353	Trustee's Amended Response to Objections to Trustee's Financing Motion
March 11, 2011	383	Minute Entry / Order
March 18, 2011	400	Financing Order (I) Approving Chapter 11 Trustee Financing; (II) Authorizing Use of Cash Collateral and Obtaining Credit Pursuant to Sections 341, 363 and 364 of the Bankruptcy Code; (III) Modifying the Automatic Stay; (IV) Providing Adequate Protection; and (V) Sealing Certain Documents
May 23, 2011	501	Trustee's Purchase Money Claims Report, Motion to Transfer Funds and Notice of Release of Proceeds from Account

May 27, 2011	512	Objection to the Trustee's Purchase Money Claims Report, Motion to Transfer Funds and Notice of Release of Proceeds from Account
May 31, 2011	515	Joinder in the Objection to Trustee's Motion to Transfer Funds and Notice of Release of Proceeds from Account
May 31, 2011	517	Joinder in the Objection to Trustee's Motion to Transfer Funds and Notice of Release of Proceeds from Account
May 31, 2011	518	Joinder in the Objection to Trustee's Motion to Transfer Funds and Notice of Release of Proceeds from Account
May 31, 2011	519	Objection to Trustee's Motion to Transfer Funds and Notice of Release of Proceeds from Account
June 17, 2011	536	Peoples Bank's Response and Objection to Trustee's Money Claims Report, Motion to Transfer Funds and Notice of Release of Proceeds from Account
June 17, 2011	538	DelCotto Law Group PLLC Statement Pursuant to Fed. R. Bankr. P. 2019
June 17, 2011	539	Objection to the Trustee's Purchase Money Claims Report, Motion to Transfer Funds and Notice of Release of Proceeds from Account
June 17, 2011	541	Supplemental Objection to the Trustee's Purchase Money Claims Report, Motion to Transfer Funds and Notice of Proceeds from Account
June 17, 2011	542	Supplemental Objection of Joplin Regional Stockyards to the Trustee's Purchase Money Claims Report , Motion to Transfer Funds and Notice of Proceeds from Account

June 17, 2011	543	Objection to Eastern Trustee's Motion to Transfer Funds and Notice of Release of Proceeds from Account
June 17, 2011	544	Response and Objection of Brent Kuehny d/b/a Dollar K Cattle Co., and the Bank of Kremlin to the Trustee's Purchase Money Claims Report, Motion to Transfer Funds and Notice of Release of Proceeds from Account
June 17, 2011	545	Response and Objection of Stockman Oklahoma Livestock Marketing, Inc. to the Trustee's Purchase Money Claims Report, Motion to Transfer Funds and Notice of Release of Proceeds from Account
June 17, 2011	546	Response and Objection of Crumpler Bros. to the Trustee's Purchase Money Claims Report, Motion to Transfer Funds and Notice of Release of Proceeds from Account
June 17, 2011	547	Joinder in the Objection to the Trustee's Purchase Money Claims Report, Motion to Transfer Funds and Notice of Release of Proceeds from Account
June 17, 2011	548	Objection to the Trustee's Purchase Money Claims Report, Motion to Transfer Funds and Notice of Release of Proceeds from Account
June 17, 2011	549	Supplemental Objection to the Trustee's Purchase Money Claims Report, Motion to Transfer Funds and Notice of Release of Proceeds from Account
June 17, 2011	552	Russell Decordova d/b/a Decordova Cattle Company's Response in Opposition to the Trustee's Purchase Money Claims Report, Motion to Transfer Funds and Notice of Release of Proceeds from Account

June 17, 2011	553	Further Supplemental Objection to the Trustee's Purchase Money Claims Report, Motion to Transfer Funds and Notice of Release of Proceeds from Account
June 17, 2011	554	Supplemental Objection to the Trustee's Motion to Transfer Funds and Notice of Release of Proceeds from Account
June 17, 2011	555	Objection to the Trustee's Purchase Money Claims Report, Motion to Transfer Funds and Notice of Release of Proceeds from Account
June 17, 2011	556	Objection and Joinder in Objection to the Trustee's Purchase Money Claims Report, Motion for Release of Fund and Notice of Release of Proceeds from Account
June 23, 2011	564	Trustee's Omnibus Reply to Objections to Purchase Money Claims Report
June 24, 2011	573	Minute Entry / Order
July 1, 2011	587	First Order Regarding Trustee's Purchase Money Claims Report
August 1, 2011	650	Supplemental Objection of Coffeyville Livestock Market, LLC to Trustee's Purchase Money Claims Report, Motion for Release of Fund and Notice of Release of Proceeds from Account
August 1, 2011	651	Supplemental Objection Trustee's Motion Regarding Payment of Cattle Sale Proceeds
August 1, 2011	652	Supplemental Objection of Rex Elmore to Trustee's Purchase Money Claims Report, Motion for Release of Fund and Notice of Release of Proceeds from Account
August 1, 2011	653	Second Supplemental Objection to Trustee's Motion to Transfer Funds and Notice of Release of Proceeds from Account

August 1, 2011	655	Joinder of First Bank and Trust Company's Second Supplemental Objection to Trustee's Motion to Transfer Funds and Notice of Release of Proceeds From Account
August 16, 2011	668	Third Supplemental Objection to Trustee's Motion to Transfer Funds and Notice of Release of Proceeds From Account
August 17, 2011	669	Amended Third Supplemental Objection to Trustee's Motion to Transfer Funds and Notice of Release of Proceeds From Account
August 17, 2011	670	Supplemental Objection and Joinder in Objection to the Trustee's Motion for Release of Proceeds From Account
August 19, 2011	672	Third Party Defendants' Joint Response to the Trustee's Motion to Transfer Funds and to Objection to Motion
September 1, 2011	672	Final Order Regarding Trustee's Purchase Money Claims Report
November 7, 2011	POC NO. 252	Proof of Claim Filed by The First Bank and Trust Company
November 14, 2011	828	Motion to Approve an Informal Ad Hoc Committee
December 7, 2011	870	Objection to Professionals' Applications for Compensation and Reimbursement of Expenses
December 8, 2011	873	Objection to Professional Fee Applications of (1) James A. Knauer, Chapter 11 Trustee; (2) Hoover Hull LLP; and (3) Baker & Daniels LLP
December 8, 2011	873-1	Exhibit 1 to Objection to Professional Fee Applications of (1) James A. Knauer, Chapter 11 Trustee; (2) Hoover Hull LLP; and (3) Baker & Daniels LLP

December 13, 2011	895-1	Exhibit 1 to Objection to Professional Fee Applications of (1) James A. Knauer, Chapter 11 Trustee; (2) Hoover Hull LLP; and (3) Baker & Daniels LLP
December 13, 2011	896	Objection to Professional Fee Applications of (1) James A. Knauer, Chapter 11 Trustee; (2) Hoover Hull LLP; and (3) Baker & Daniels LLP
January 9, 2012	POC NO. 253	Amended Proof of Claim Filed by The First Bank and Trust Company
February 21, 2012	1056	Application to Employ Kroger, Gardis & Regas, LLP as Special Counsel to Chapter 11 Trustee
February 21, 2012	1056-1	Exhibit A to Application to Employ Kroger, Gardis & Regas, LLP as Special Counsel to Chapter 11 Trustee
February 21, 2012	1056-2	Exhibit B to Application to Employ Kroger, Gardis & Regas, LLP as Special Counsel to Chapter 11 Trustee
March 13, 2012	1084	Order Granting Application to Employ Kroger, Gardis & Regas, LLP as Special Counsel to Chapter 11 Trustee
March 16, 2012	1098	Preliminary Report of Special Counsel for the Trustee, James A. Knauer Regarding Investigation of Fifth Third Bank's Proof of Claim and Potential Claims Against Fifth Third
June 5, 2012	1166	Report of the Trustee, James A. Knauer Regarding Investigation and Analysis of Potential Claims Against Fifth Third Bank
June 8, 2012	1177	Preliminary Objection to Report of the Trustee, James A. Knauer Regarding Investigation and Analysis of Potential Claims Against Fifth Third Bank

June 8, 2012	1197	Motion to Strike Report of the Trustee, James A. Knauer Regarding Investigation and Analysis of Potential Claims Against Fifth Third Bank
June 20, 2012	1201	Objection of the First Bank and Trust Company to Trustee's Report
June 21, 2012	1204	Motion of the First Bank and Trust Company to Strike Trustee's Report
June 22, 2012	1206	Supplemental Objection to Report of Trustee, James A. Knauer Regarding Investigation and Analysis of Potential Claims Against Fifth Third Bank
June 25, 2012	1209	Defendant CPC Livestock's Joinder to Objections to Trustee's Report Regarding Claims Against Fifth Third Bank
June 29, 2012	1219	Reply Memorandum of The First Bank and Trust Company to Memorandum in Opposition to Motion for Expedited Hearing
July 10, 2012	1237	Motion to Remove Trustee Pursuant to 11 U.S.C. §324
July 10, 2012	1238	Renewal of Objection of The First Bank and Trust Company to Application to Employ Baker & Daniels, LLP (n/k/a Faegre Baker Daniels LLP) as Counsel to Chapter 11 Trustee
July 10, 2012	1239	Motion of The First Bank and Trust Company to Remove Trustee Pursuant to 11 U.S.C. § 324
July 18, 2012	1248	Joint Evidentiary Submission of Certain Creditors in Support of Motions to Remove Trustee and Renewal of Objection to Application to Employ Trustee Counsel
July 18, 2012	1248-1	Exhibit 1 to Joint Evidentiary Submission of Certain Creditors in Support of Motions to Remove Trustee and Renewal of Objection to Application to Employ Trustee Counsel

July 18, 2012	1248-2	Exhibit 2 to Joint Evidentiary Submission of Certain Creditors in Support of Motions to Remove Trustee and Renewal of Objection to Application to Employ Trustee Counsel
July 18, 2012	1248-3	Exhibits 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, and 3I to Joint Evidentiary Submission of Certain Creditors in Support of Motions to Remove Trustee and Renewal of Objection to Application to Employ Trustee Counsel
July 23, 2012	1255	Trustee's Chapter 11 Plan of Liquidation
July 23, 2012	1256	Disclosure Statement for Trustee's Chapter 11 Plan
July 30, 2012	1278	Creditors' Joinder in the First Bank and Trust Company's Objection to Employment of Baker & Daniels, LLP (n/k/a Faegre Baker Daniels LLP) as Counsel to Chapter 11 Trustee and First Bank's Request for Order Terminating Employment
July 30, 2012	1279	Creditors' Joinder in the First Bank and Trust Company's Objection to Employment of Baker & Daniels, LLP (n/k/a Faegre Baker Daniels LLP) as Counsel to Chapter 11 Trustee and First Bank's Request for Order Terminating Employment
August 10, 2012	1324	Motion of the Kentucky Cattlemen's Association to Remove the Trustee Pursuant to 11 U.S.C. §324 and to Terminate Employment of the Trustee's Lead Counsel
August 13, 2012	1326	Trustee's Response to Objections to and Motion to Strike the Trustee's Report
August 13, 2012	1327	Response to Renewal of Objection of First Bank to Application to Employ Baker & Daniels LLP (NKA Faegre Baker Daniels LLP) as Counsel to the Trustee and the Bluegrass Joinder Thereto
August 13, 2012	1328	Affidavit of James M. Carr as Supplemental

Rule 2014 Disclosure		
August 13, 2012	1329	Trustee's Response to Motions to Remove Trustee
August 13, 2012	1330	Affidavit of James A. Knauer, Trustee as Supplemental Rule 2014 Disclosure
August 13, 2012	1331	Notice of Filing Document Under Seal
August 14, 2012	1333	Trustee's Motion for Leave to File Document Under Seal [Participation Agreement]
August 16, 2012	1345	Creditors' Reply to Responses Regarding Motions to Remove Trustee and Trustee Lead Counsel
August 16, 2012	1348	Reply by Superior Livestock Auction, Inc. to Trustee's Response to Objections and Motions to Strike the Trustee's Report
August 16, 2012	1351	Notice of Filing of National Cattleman's Beef Association's Letter in Support of Motions to Remove Trustee
August 17, 2012	1357	Reply Memorandum in Support of Renewal of Objection of the First Bank and Trust Company to Application to Employ Baker & Daniels, LLP (N/K/A Faegre Baker Daniels LLP) as Counsel to Chapter 11 Trustee
August 17, 2012	1357-1	Exhibit 1 (filed under seal) to the Reply Memorandum in Support of Renewal of Objection of the First Bank and Trust Company to Application to Employ Baker & Daniels, LLP (N/K/A Faegre Baker Daniels LLP) as Counsel to Chapter 11 Trustee (filed unredacted on 9/24/2012, Doc. 1440)
August 17, 2012	1357-2	Exhibit 2 (filed under seal) to the Reply Memorandum in Support of Renewal of Objection of the First Bank and Trust Company to Application to Employ Baker & Daniels, LLP (N/K/A Faegre Baker Daniels LLP) as Counsel to Chapter 11 Trustee

(filed unredacted on 9/24/2012, Doc. 1440)

August 17, 2012	1357-3	Exhibit 3 to the Reply Memorandum in Support of Renewal of Objection of the First Bank and Trust Company to Application to Employ Baker & Daniels, LLP (N/K/A Faegre Baker Daniels LLP) as Counsel to Chapter 11 Trustee (filed unredacted on 9/24/2012, Doc. 1440)
August 18, 2012	1361	Reply Memorandum in Support of Motion of the First Bank and Trust Company to Remove Trustee Pursuant to 11 U.S.C. § 324
August 18, 2012	1361-1	Exhibit 1 (filed under seal) to the Reply Memorandum in Support of Motion of the First Bank and Trust Company to Remove Trustee Pursuant to 11 U.S.C. § 324 (filed unredacted on 9/24/2012, Doc. 1439)
August 18, 2012	1361-2	Exhibit 2 (filed under seal) to the Reply Memorandum in Support of Motion of the First Bank and Trust Company to Remove Trustee Pursuant to 11 U.S.C. § 324 (filed unredacted on 9/24/2012, Doc. 1439)
August 18, 2012	1361-3	Exhibit 3 to the Reply Memorandum in Support of Motion of the First Bank and Trust Company to Remove Trustee Pursuant to 11 U.S.C. § 324
August 18, 2012	1361-4	Exhibit 4 (filed under seal) to the Reply Memorandum in Support of Motion of the First Bank and Trust Company to Remove Trustee Pursuant to 11 U.S.C. § 324 (filed unredacted on 9/24/2012, Doc. 1439)
August 19, 2012	1363	Motion of The First Bank and Trust Company to file Documents and Deposition Transcripts Under Seal
August 23, 2012	1377	Joinder in Motions by Superior Livestock Auction, Inc.

August 28, 2012	1383	Order Granting Motion of The First Bank and Trust Company to File Documents and Deposition Transcripts Under Seal
August 31, 2012	1388	Order Denying Motions to Remove Trustee
August 31, 2012	1389	Order Overruling Renewed Objections to Employment of Faegre Baker Daniels LLP
August 31, 2012	1390	Order on Objections to and Motions to Strike Trustee's Report
September 7, 2012	1408	Notice of Appeal
September 13, 2012	1413	Notice of Appeal
September 13, 2012	1415	Notice of Appeal
September 14, 2012	1419	Notice of Appeal
September 24, 2012	1439	Notice of Filing Unredacted Version of Reply Memorandum in Support of Motion of the First Bank and Trust Company to Remove Trustee Pursuant to 11 U.S.C. § 324
September 24, 2012	1440	Notice of Filing Unredacted Version of Reply Memorandum in Support of Motion of The First Bank and Trust Company to Application to Employ Baker & Daniels, LLP (n/k/a Faegre Baker Daniels LLP) as Counsel to Chapter 11 Trustee

B. Evidence submitted but not necessarily filed electronically in Case No. 10-93904-BHL-11:

Participation Agreement By and Between Wells Fargo Business Credit, Inc. and Fifth Third Bank, NA. (Dated as of February 9, 2005), Production Nos. FT028176-200, filed under seal on August 13, 2012 by the Trustee as reflected by Doc. No. 1331;

Transcript of Omnibus Hearing on August 20, 2012 filed by J&J Court Reports, Inc. on or about September 11, 2012 as reflected by Doc. No. 1411;

Transcript of Deposition of James Knauer, Volumes I and II, and all Exhibits thereto, delivered to the Court at the August 20, 2012 hearing;

Wells Fargo & Company Policy Regarding Legal Conflicts of Interest (Revision of October 14, 2010) (marked at August 20, 2012 hearing as Creditor's Exhibit 1); and

December 26, 2010 emails between David A. Foster and Jim Hubbard (marked at August 20, 2012 hearing as Creditor's Exhibit 2).

C. Filings from Case No. 09-06065-BHL-11 (In re Lauth Investment Properties, LLC)

August 3, 2009	328	Appearance of James A. Knauer for Wells Fargo Bank, NA
September 2, 2009	452	Joint Motion for Entry of Agreed Protective Order
May 13, 2011	1988	Wells Fargo Bank, National Association's Limited Response to Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code

II. STATEMENT OF ISSUES ON APPEAL

1. Whether the Bankruptcy Court erred in concluding that the Trustee's lack of disclosure of his and his firm's representation of Wells Fargo until August 13, 2012 – if only to explain it away as not arising to the level of a conflict – was not a valid basis to grant the Motions to Remove the Trustee.

2. Whether the Bankruptcy Court erred in failing to find that where a Trustee concludes that his and his firm's representation of an existing client ethically requires him to obtain a consent and conflict waiver from the client in order to accept the engagement as Trustee, he need not promptly disclose the connection to such client to the Court and the other creditors.

3. Whether the Bankruptcy Court erred by concluding that it was unnecessary to determine whether the Trustee was required to disclose the KGR/Wells Representations when the Trustee was initially considered as a candidate for trustee.

4. Whether the Bankruptcy Court erred by not addressing whether the Trustee violated a continuing duty to disclose under Fed. R. Bankr. P. 2007.1.

5. Whether the Bankruptcy Court erred in concluding that Wells Fargo was neither a creditor nor a "party in interest" for purposes of the disclosure requirements set forth in Federal Rule of Bankruptcy Procedure 2007.1(c) when "party in interest" is to be broadly construed for disclosure purposes.

6. Whether the Bankruptcy Court erred in concluding that the Trustee was a "disinterested person" as defined in 11 U.S.C. § 101(14).

7. Whether the Bankruptcy Court erred in concluding that the Trustee could continue to serve as Trustee and to become directly adverse to and commence litigation against the Wells Fargo Participant without regard to any limitations or prohibitions in the Wells Conflict Waiver or the Indiana Rules of Professional Conduct.

8. Whether the Bankruptcy Court erred in concluding that the Trustee fully disclosed the connections of KGR to Fifth Third and finding that the Trustee obtained from Fifth Third a consent and conflict waiver authorizing the Trustee to serve as Trustee notwithstanding representations of Fifth Third in the absence of any evidentiary record of such a "Fifth Third Conflict Waiver."

9. Whether the Bankruptcy Court erred in finding that the Trustee was free to be adverse to or commence litigation against Fifth Third.

10. Whether the Bankruptcy Court erred in concluding that the conduct of the Trustee or his professionals was insufficient to grant the Motions to Remove the Trustee.

11. Whether the Bankruptcy Court erred in concluding that removal of the trustee would significantly impair creditor recoveries and that the delay caused by replacement of the Trustee was cause for overruling the Motions to Remove the Trustee.

12. Whether the Bankruptcy Court erred by applying the incorrect standard to the Motions to Remove the Trustee.

Respectfully submitted,

/s/ Daniel J. Donnellon

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Attorneys for The First Bank and Trust
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CERTIFICATE OF SERVICE

I certify that on the 27th day of September, 2012, I electronically filed the foregoing Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented with the Clerk of Courts using the CM/ECF system, which will send notification of such filing to CM/ECF participants:

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/s/ Stephen A. Weigand
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